

07/782,696


**UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/782,696 10/25/91 CHUTER

1-217/1
EXAMINER
 RICHARD J. GODLEWSKI
PATENT ATTORNEY
P.O. BOX 2256
WEST LAFAYETTE, IN 47906
BRITTINGHAM, D.
ART UNIT PAPER NUMBER

10

3308
DATE MAILED:

12/14/92

 This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 9-28-92/10-6-92 ☐ This action is made final.

 A shortened statutory period for response to this action is set to expire _____ month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

- 1.
- ☒
- Claims
- 1, 2, 5, 9-11, 14-17, 20, 24-30
- are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

- 2.
- ☒
- Claims
- 3, 4, 6-8, 12, 13, 18, 19, 21-23
- have been cancelled.

- 3.
- ☐
- Claims _____ are allowed.

- 4.
- ☒
- Claims
- 1, 2, 5, 9-11, 14-17, 20, 24-30
- are rejected.

- 5.
- ☐
- Claims _____ are objected to.

- 6.
- ☐
- Claims _____ are subject to restriction or election requirement.

- 7.
- ☐
- This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

- 8.
- ☐
- Formal drawings are required in response to this Office action.

- 9.
- ☐
- The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are
- ☐
- acceptable.
- ☐
- not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

- 10.
- ☐
- The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been
- ☐
- approved by the examiner.
- ☐
- disapproved by the examiner (see explanation).

- 11.
- ☐
- The proposed drawing correction, filed on _____, has been
- ☐
- approved.
- ☐
- disapproved (see explanation).

- 12.
- ☐
- Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has
- ☐
- been received
- ☐
- not been received.
-
- ☐
- been filed in parent application, serial no. _____; filed on _____

- 13.
- ☐
- Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

- 14.
- ☐
- Other

EXAMINER'S ACTION

Serial No. 07/782,696

-2-

Art Unit 3308

Applicant's election without traverse of Group I in Paper No. 8 is acknowledged.

The disclosure is objected to because of the following informalities: Page 15, lines 5 and 6, the arms should be labeled elements 50 and 52, not 54; and, page 22, line 22, hydrogel is misspelled. Appropriate correction is required.

Claims 1, 20, 31 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1 and 20, line 1, there is no antecedent basis for "the wall".

With respect to claims 31 and 36, "one or more" constitutes an improper alternative expression; this should be changed to "at least one."

Serial No. 07/782,696

-3-

Art Unit 3308

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24 and 27 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Choudhury.

With respect to claim 24, Choudhury discloses a graft comprising a spring assembly (see column 2, lines 40-44 and figures 3 and 4), introducer means (see column 2, line 67 - column 3, line 11) and retaining means (see column 2, lines 45-56 and column 3, line 14 - column 4, line 4). *Missing words - C.3, line 11*

With respect to claim 27, see column 2, lines 45-56 and column 3, line 14 - column 4, line 4.)

Art Unit 3308

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 1, 2, 5, 9-11, 14-17, 20, 25, 26 and 28-38 are rejected under 35 U.S.C. § 103 as being unpatentable over Choudhury in view of Kreamer.

With respect to claims 1, 20, 25, 28, 29 and 30, Choudhury discloses a radially expandable graft comprising a spring expanding assembly (see column 2, lines 40-44), anchoring means (see figure 4, element 28), a tubular carrier (see column 2, lines 45-49), a central control means (see figure 1, element 38), mooring loops (see column 2, lines 52-56) and disposable ties for introducing the graft (see column 2, line 67 - column 3, line

Art Unit 3308

17). Kreamer teaches using a removable sheath for introducing the graft in order to protect the blood vessel from the graft. (See column 6, lines 45-54.) It would have been obvious to one of ordinary skill in the art to have replaced the ties of Choudhury with the removable sheath of Kreamer in order to protect the blood vessel from the graft.

With respect to claim 2, see Kreamer column 4, lines 56-64.

With respect to claim 5, see Choudhury figures 3 and 4.

With respect to claims 9 and 10, see Choudhury figure 4.

With respect to claim 11, see Choudhury figure 4, element 28.

With respect to claim 14, see Kreamer column 7, lines 9-11.

With respect to claim 15, see Choudhury figure 1, element 38.

With respect to claim 16, see Kreamer column 4, lines 34-37.

With respect to claim 17, see Kreamer column 4, lines 6-10.

With respect to claim 26, Choudhury discloses a retaining means comprising an elongated member with a head which facilitates movement of the graft, but which does not expand. (See column 2, lines 45-49.) Kreamer teaches using an elongated member having an expandable head for occluding the blood vessel. (See column 2, lines 53-60 and figure 9.) It would have been

Art Unit 3308

obvious to one of ordinary skill in the art to have replaced the head of the Choudhury device with the expandable head of Kreamer in order to occlude the blood vessel and minimize blood flow through the surgical site.

With respect to claims 30 and 31, Choudhury discloses a radially expandable graft comprising a spring expanding assembly (see column 2, lines 40-44), anchoring means (see figure 4, element 28), a tubular carrier (see column 2, lines 45-49), a central control means (see figure 1, element 38), mooring loops (see column 2, lines 52-56) and disposable ties for introducing the graft (see column 2, line 67 - column 3, line 17). Kreamer teaches using a removable sheath for introducing the graft in order to protect the blood vessel from the graft. (See column 6, lines 45-54.) It would have been obvious to one of ordinary skill in the art to have replaced the ties of Choudhury with the removable sheath of Kreamer in order to protect the blood vessel from the graft.

Kreamer also teaches to use short spikes, which attach to the prosthesis at a position remote from the proximal end, for securing the graft while the sheath is being removed. (See figure 8, element 78 and column 6, lines 39-66.) It would have been obvious to one of ordinary skill in the art to have included

the short spikes on Choudhury in order to secure the graft while the retaining means are removed.

With respect to claim 33, Kreamer teaches using an elongated member having an expandable head for occluding the blood vessel. (See column 2, lines 53-60 and figure 9.) It would have been obvious to one of ordinary skill in the art to have replaced the head of the Choudhury device with the expandable head of Kreamer in order to occlude the blood vessel and minimize blood flow through the surgical site.

With respect to claim 34, see Kreamer column 6, lines 51-66.

With respect to claim 35, see Kreamer column 6, lines 59-66 and figure 8, element 8.

With respect to claim 36, see Choudhury column 2, line 67 - column 3, line 17.

With respect to claim 37, see Choudhury figure 4.


With respect to claim 38, see Kreamer figure 9 and column 2, lines 53-60.


Serial No. 07/782,696

-8-

Art Unit 3308

Any inquiry concerning this communication should be directed to D.S. Brittingham at telephone number (703) 308-0858.


D.S. Brittingham
December 10, 1992


RANDALL L. GREEN
SPE
ART UNIT 338